



THE
CEYLON GOVERNMENT
GAZETTE

EXTRAORDINARY.

No. 8,863 — TUESDAY, FEBRUARY 10, 1942.

Published by Authority.

PART II.—LEGAL.

DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

An Ordinance to make provision for the insurance of business and personal movables against war damage: to authorise payment in respect of war damage to such movables otherwise than under policies of insurance: and for other matters connected with or incidental to the purposes aforesaid.

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An Ordinance to make provision for the insurance of business and personal movables against war damage : to authorise payment in respect of war damage to such movables otherwise than under policies of insurance : and for other matters connected with or incidental to the purposes aforesaid.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

Short title.

1. This Ordinance may be cited as the War Damage (Business and Personal Movables) Ordinance, No. of 1942.

Commissioner.

2. (1) The person appointed to be, or to act as, Commissioner for War Risks Insurance under the War Risks (Goods) Insurance Ordinance shall be the Commissioner for the purposes of this Ordinance.

(2) In the performance of his duties and the discharge of his functions under this Ordinance, the Commissioner shall be subject to the general direction and control of the Executive Committee of Labour, Industry and Commerce.

Insurance schemes.

3. (1) The Governor may, by notification published in the *Gazette*, put into operation two insurance schemes, that is to say—

(a) a scheme, in this Ordinance referred to as "the business movables scheme", whereby the Government undertakes the liability of insuring persons carrying on business against war damage to the goods specified in section 4 as being goods which, in relation to those persons respectively, are insurable under the business movables scheme ;

(b) a scheme, in this Ordinance referred to as "the personal movables scheme", whereby the Government undertakes the liability of insuring any persons (whether carrying on business or not) against war damage to the goods specified in section 4 as being goods which, in relation to those persons respectively, are insurable under the personal movables scheme.

(2) Each of the schemes shall be such as to secure that, subject to the provisions of this Ordinance—

(a) the extent and nature of the indemnity provided by the Government as insurers under the scheme, and the cases in which and the conditions subject to which that indemnity is provided, are determined by a policy of insurance issued in the prescribed form by a person acting on behalf of the Government ;

(b) there are payable under the policy such premiums as may be prescribed,

and different forms of policy and different premiums may be prescribed in relation to different classes of cases, and any prescribed form of policy may be such as to incorporate by reference provisions set out in the regulation prescribing the form.

Goods insurable under the schemes.

4. (1) Subject to the provisions of sub-section (4), the goods insurable under the business movables scheme in relation to any person carrying on business are all goods situated in Ceylon—

(a) which are in his possession (whether he owns them or not) and are held or used by him wholly or mainly for the purposes of that business ; or

(b) which, though not in his possession, are owned by him in the course of that business ; or

(c) which are the subject of a mortgage in his favour which he holds in the course of that business.

(2) For the purposes of this Ordinance, the carrying on of any activity by a corporation or unincorporated body of persons shall be deemed to be the carrying on of a business:

Provided that goods which would, apart from this proviso, be insurable under the business movables scheme in relation to a corporation sole or a body of persons who are trustees, and would be so insurable by virtue only of this sub-section, shall, in such cases as may be prescribed, be deemed not to be insurable in relation to the corporation or body of persons under the business movables scheme.

(3) Subject to the provisions of sub-section (4), the goods insurable under the personal movables scheme in relation to any person are all goods situated in Ceylon which are not, in relation to him, insurable under the business movables scheme and are either—

- (a) owned by him or in his possession; or
- (b) owned by, or in the possession of, a member of his household ordinarily resident with him or a domestic servant of his:

Provided that no goods shall be insurable in relation to any person under the personal movables scheme as being goods owned by, or in the possession of, such a member or servant as aforesaid unless they are insurable under the personal movables scheme in relation to that member or servant.

(4) The following goods shall not, in relation to any person, be insurable under either of the schemes—

- (a) any goods as respects which that person is, or could be, insured under the War Risks (Goods) Insurance Ordinance;
- (b) any ship other than a vessel used solely in docks, ports, estuaries, rivers or other inland waters or inland waterways;
- (c) the machinery, tackle and furniture of any ship other than such a vessel as aforesaid, so long as the machinery, tackle or furniture is in the ship;
- (d) any goods in the possession of, or held at the disposal of, a Government department or any other person on behalf of His Majesty, so long as the owner of the goods is entitled, and, in the case of goods being a vehicle or aircraft, is entitled otherwise than by virtue of the Defence (Compensation) Regulations, 1941, to be indemnified by the Crown against war damage to the goods.

For the purposes of this sub-section, a vessel shall be deemed to be used solely in the manner specified in paragraph (b) thereof notwithstanding that it may be used otherwise on any special occasion, or so long as any use to which it is put otherwise than in the manner specified in the said paragraph (b) is incidental only to its being used in the said manner.

(5) For the purposes of this section, where any goods are consigned from a port in Ceylon to any other such port in a vessel which in its transit between those ports is not due to call at any port outside Ceylon, the goods shall at all times during the transit be deemed to be situated in Ceylon.

5. (1) Subject to the provisions of sub-section (2), the times at which payments by the Commissioner under either of the schemes may be made in any class of cases shall be such times as may be prescribed either generally or in relation to that class of cases.

Time for payment of losses under the schemes.

(2) Notwithstanding anything in sub-section (1)—

- (a) the Commissioner may make the whole or any part of any particular payment under either of the schemes in respect of the destruction of or damage to any goods at an earlier date than would be allowable under sub-section (1) if he is satisfied either that the replacement or repair of the goods destroyed or damaged is expedient in the public interest or, in the case of the personal movables scheme, that it is expedient that the payment, or that part thereof, should be made to avoid undue hardship; and
- (b) the Commissioner may make a payment under either of the schemes at an earlier date than would be allowable under sub-section (1) if the amount claimed does not exceed such sum as may be prescribed in relation to the scheme in question, and if he is satisfied that the total sum claimable under the policy in question in respect of all war damage which in his opinion should be included in the same claim does not exceed such prescribed sum.

- (3) Where the whole or any part of a payment in respect of the destruction of or damage to any goods is made on an earlier date than would be allowable under sub-section (1), and is so made by virtue of paragraph (a) of sub-section (2), the Commissioner may impose conditions restricting the manner in which the sum paid may be applied in the replacement or repair of the goods destroyed or damaged, and if in the application as aforesaid of the whole or any part of the sum paid any conditions imposed under this sub-section are not complied with, the sum or the part thereof in question shall be recoverable as a debt due to the Crown.
- (4) Except in so far as a payment in respect of war damage under either of the schemes is, by virtue of the provisions of sub-section (2), made at an earlier date than would be allowable under sub-section (1), interest at the rate of two and a half per centum per annum shall accrue on the payment from the time of the occurrence of that damage, and shall be payable when the payment is made.
6. The premiums prescribed for insurance under the personal movables scheme may be such as to secure that the rate of premium varies in such manner as may be prescribed for any prescribed increase in the amount insured by any person.
7. The prescribed form of policy under the personal movables scheme shall contain provisions securing that no indemnity shall be given in excess of such sum as may be specified in the policy; and the indemnity provided by any such prescribed form of policy under the personal movables scheme in respect of the destruction of or damage to goods of any description specified in the policy shall be limited in such manner as may be so specified.
8. A person may recover on an insurance effected by him under and in accordance with the personal movables scheme on goods owned by or in the possession of a member of his household or a domestic servant of his notwithstanding that he has himself no insurable interest in the goods, but where a person recovers as aforesaid in respect of any such goods in which he has no insurable interest, he shall hold the net amount recovered in trust for the member or servant in question.
9. The Commissioner may, in his discretion, refuse any application for the issue of a policy under the schemes.
10. The Commissioner shall have power, with the approval of the Financial Secretary, in any case where it appears to be just and equitable so to do, to refund the whole or any part of any sum paid by any person by way of premium under either of the schemes, or to remit payment of any part of any sum so payable by any person.
11. No payment under either of the schemes shall be made in respect of war damage to goods insurable under the scheme in question which appears to the Commissioner to have occurred on any occasion if the amount recoverable under the scheme in respect of the damage is less than twenty rupees.
12. An assignment, whether absolute or by way of charge, of the right to a payment under either of the schemes, or of any part of such a payment, other than an assignment which does not affect any beneficial interest in such a payment or in any part of such a payment, shall be of no effect until it has been approved in writing by the Commissioner.
13. Stamp duty shall not be chargeable in respect of any policy of insurance issued in pursuance of either of the schemes.
14. The Commissioner, acting in accordance with such regulations as may be made in that behalf by the Executive Committee, may make payment to a person in respect of war damage to goods which, when the damage occurred, were insurable in relation to him under the business movables scheme or the personal movables scheme, whether or not that person was insured under either of those schemes.
15. All payments required to be made and all expenses incurred for the purposes of this Ordinance by the Commissioner shall be met out of moneys provided by the State Council; and all sums received by the Commissioner under this Ordinance shall be credited to the general revenue of this Island.
16. (1) Where any person is entitled under the Defence (Compensation) Regulations, 1941, to a payment in respect of war damage—
- (a) by reason of the doing of any work on land in the exercise of emergency powers; or
- Graduated premiums under personal movables scheme.
- Limitation of indemnity provided under personal movables scheme.
- Rights under insurance on goods of members of household or servants.
- Power to refuse applications for insurance under the schemes.
- Refund of premiums
- Minimum payments under the schemes.
- Assignment of rights to payments.
- Exemption of policies from stamp duty.
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- (b) by reason of the occurrence of damage to a vehicle or aircraft requisitioned on behalf of His Majesty in the exercise of emergency powers,

no payment in respect of the damage shall be made under the provisions of this Ordinance or a policy issued under either of the schemes operated thereunder to that person or to any person claiming under him.

(2) Where war damage occurs to goods, and at the time when, apart from the provisions of this sub-section, any payment (whether with or without interest) would be made to any person in respect thereof under a policy issued under either of the schemes operated under this Ordinance, that person or any other person—

(a) has received (otherwise than by way of loan) in respect of the damage any sum paid on behalf of His Majesty, not being a sum paid by virtue of the Defence (Compensation) Regulations, 1941, or of this Ordinance; or

(b) is entitled to receive (otherwise than by way of loan) in respect of the damage any sum payable on behalf of His Majesty, not being a sum payable by virtue of the Defence (Compensation) Regulations, 1941, or of this Ordinance,

the payment under the policy shall be withheld or reduced, as the case may require, for the purpose of securing—

(i.) that the total amount (excluding any interest) paid in respect of the damage under the policy is reduced by the aggregate of any such sums received or receivable in respect of the damage as are referred to in paragraphs (a) and (b) of this sub-section; or

(ii.) if the aggregate of those sums exceeds the total amount (excluding any interest) which, apart from the provisions of this sub-section, would be payable in respect of the damage under the policy, that no payment in respect of the damage is made under the policy,

and any interest on the payment shall be withheld or reduced accordingly.

(3) Where war damage occurs to any goods in Ceylon and it is certified by an Officer of State or a Minister having general control over any department of Government that the damage arose out of action taken on behalf of or by agreement with, or under the direction of a person acting on behalf of or by agreement with the Crown, being action taken for purposes with which that department is concerned, no damages shall be recoverable for the damage to the goods, in so far as payment in respect thereof falls to be made under the provisions of this Ordinance or under a policy issued under either of the schemes operated under this Ordinance, on the ground that the damage was attributable to negligence, nuisance or breach of duty.

(4) For the purposes of sub-section (3), a certificate purporting to be issued by an Officer of State or a Minister and to be signed by him or on his behalf, shall be receivable in evidence and shall be deemed, until the contrary is proved, to be a certificate of the Officer of State or Minister, as the case may be.

17. (1) The Auditor-General shall be responsible for for the audit of the accounts of the schemes.

Audit and annual statement of accounts.

(2) With respect to each of the schemes, the Commissioner shall prepare a statement of the sums received and the payments made by him in each financial year and such statement shall be laid on the table of the State Council for the information of the members thereof.

In this sub-section, "financial year" means the period of twelve months commencing on the first day of October in any year and ending on the thirtieth day of September in the next succeeding year.

18. The Governor may employ or authorise the employment of persons to act as agents of the Government for any of the purposes of the schemes and may pay the person so employed such remuneration (if any) as the Governor may determine; and such expenses incurred by the said agents as the Financial Secretary may approve shall be defrayed by the Commissioner.

Employment of agents by the Government.

19. No person shall, after such date as may be prescribed, take part in the promoting or carrying on of any business or scheme whereby persons are, or may become, entitled or eligible, either absolutely or conditionally, to or for any form of indemnification, whether total or partial, and whether by way of a money payment or not, in respect of war damage to goods which are insurable in relation to those persons respectively under either of the insurance schemes operated under this Ordinance.

Restriction on carrying on certain mutual insurance schemes.

Premiums to be treated as capital outgoings.

20. Premiums paid under policies issued under either of the schemes operated under this Ordinance shall be treated for all purposes as outgoings of a capital nature.

Payments in case of non-residents.

21. (1) The forms of policies prescribed for the business movables scheme and for the personal movables scheme shall contain provisions securing that a payment thereunder which the Commissioner is satisfied would inure for the benefit of a person not resident in Ceylon at the time when the payments would fall due shall be payable only as to so much thereof, and subject to such conditions, as may be prescribed.

(2) Regulations made for the purposes of this section may contain such provisions (including penal provisions) as appear to the Executive Committee to be necessary for securing the due operation and enforcement of the regulations.

Certain expenses not to be deduction for income tax or excess profits duty.

22. No sum shall be deducted in computing the amount of the profits or income of any person or business for the purposes of the Income Tax Ordinance or of the Excess Profits Duty Ordinance, No. 38 of 1941, and no sum shall be included in ascertaining the management expenses of any company for the purposes of section 42 (1) of the Income Tax Ordinance, in respect of—

- (a) any premium payable under a policy issued under either of the schemes operated under this Ordinance; or
- (b) any expenditure on repairing or otherwise making good war damage in so far as such person, business or company is entitled to a payment in respect of the damage by virtue of a policy issued under either of such schemes.

Power of Commissioner to obtain information.

23. (1) Any person authorised in that behalf by the Commissioner may at all reasonable times, on producing sufficient documentary evidence of his authority, enter any premises occupied by any person carrying on any business in Ceylon for the purpose of that business and may inspect the premises and request any person found therein who is for the time being in charge thereof, or in control of the business carried on therein, to produce to him and allow him to examine such accounts, books and other documents and to furnish to him such information as he may reasonably require for the purposes of ascertaining whether or not, and, if so, to what extent, the person carrying on the business is insured under the business scheme in respect of goods which are insurable under that scheme in relation to him in connection with that business, and of ascertaining the value of any goods so insurable and the maximum amount which would be recoverable in respect of any such goods under a policy issued under that scheme if those goods were all totally destroyed.

(2) Where—

- (a) under paragraph (a) of sub-section (2) of section 5, a payment in respect of the destruction of or damage to any goods has been made under either of the schemes at an earlier date than would be allowable under sub-section (1) of that section, and the Commissioner has imposed conditions as to the application of the sum paid; and
- (b) a person authorised by the Commissioner for the purposes of this sub-section has reason to believe that there are on any premises any goods acquired with the proceeds of the payment to replace the goods destroyed, or any goods repaired out of the proceeds of the payment,

the powers conferred by that last preceding sub-section shall be exercisable by that person in relation to those premises for the purpose of ascertaining whether or not the said conditions have been complied with in relation to the goods as they are exercisable by a person authorised in that behalf by the Commissioner in relation to such premises, and for such purposes, as are mentioned in that sub-section.

(3) If any person wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with a request made thereunder, he shall, in respect of each occasion on which any such obstruction or failure takes place, be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding four hundred rupees.

(4) If any person in purporting to comply with his obligations under this section knowingly or recklessly makes a statement false in a material particular, he shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding three months or to a fine not exceeding one thousand rupees or to both such imprisonment and such fine.

(5) A prosecution for an offence under this section shall not be instituted except by, or with the written sanction of, the Attorney-General.

24. (1) No information relating to any individual business, being information which has been obtained by, or on behalf of, any person for the purposes of his functions under this Ordinance, shall, without the previous consent in writing of the owner for the time being of that business, be published or disclosed otherwise than in connexion with the execution or for the purposes of this Ordinance or any regulation or scheme having effect by virtue of this Ordinance.

Restriction on disclosure of information.

(2) Nothing in the preceding sub-section shall apply to any disclosure of any information made for the purposes of any legal proceedings pursuant to this Ordinance or of any criminal proceedings which may be taken, whether pursuant to this Ordinance or otherwise, or for the purposes of any report of any such proceedings as aforesaid.

(3) If any person discloses any information in contravention of this section, he shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding three months or to a fine not exceeding five hundred rupees or to both such imprisonment and such fine or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding one thousand rupees or to both such imprisonment and such fine.

25. (1) The Executive Committee may make regulations for or in respect of all matters required or authorised by this Ordinance to be prescribed and generally all such regulations as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance.

Regulations.

(2) Any power conferred by this Ordinance to prescribe a sum includes power to prescribe different sums in relation to different classes of cases, and, in the exercise of any power so conferred to prescribe any class of persons or description of goods, the persons or goods may be described by reference to any circumstances whatsoever.

(3) No regulation made by the Executive Committee shall have effect until it has been approved by the State Council and ratified by the Governor. Notification of such approval and ratification shall be published in the *Gazette*.

(4) A regulation made by the Executive Committee when approved by the State Council and ratified by the Governor shall, upon notification of such approval and ratification in the *Gazette*, be as valid and effectual as if it were herein enacted.

26. Where—

- (a) anything falling within the meaning in this Ordinance of the expression “movables” has been so affixed to any land as to have become part of that land; and
- (b) there is any person who is entitled to remove it from the land, and would be entitled to it if he so removed it,

Definition of owner in relation to certain movables affixed to land.

it shall be deemed for the purposes of this Ordinance to be owned by that person.

27. (1) In this Ordinance, the expression “war damage” means—

Definition of “war damage”.

- (a) damage occurring (whether accidentally or not) as the direct result of action taken by the enemy, or action taken in combating the enemy or in repelling an imagined attack by the enemy;
- (b) damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of such damage as aforesaid;
- (c) accidental damage occurring as the direct result—
- (i) of any precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by the enemy; or
- (ii) of precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action,

being, in either case, measures involving a substantial degree of risk to property:

Provided that the measures mentioned in paragraph (c) of this sub-section do not include the imposing of restrictions on the display of lights or measures taken for training purposes.

(2) For the purposes of sub-section (1), such action against the enemy as is referred to in paragraph (a) of that sub-section—

- (a) shall, in relation to any ship or aircraft taking part in such action, be deemed to continue until the ship or aircraft has returned to its base;
- (b) includes naval, military or air reconnaissances and patrols.

(3) References in this Ordinance to the occurrence of war damage shall be construed as references to the taking of the action or measures specified in sub-section (1) of this section from which that damage results.

Interpretation.

28. In this Ordinance, unless the context otherwise requires—

- “building” includes a building in an incomplete state;
- “Commissioner” means the Commissioner for the purposes of this Ordinance who is referred to in section 2;
- “emergency powers” means powers conferred—

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- (a) by regulations made under the Emergency Powers (Defence) Acts, 1939 and 1940, as applied to Ceylon by Order of His Majesty in Council; or
- (b) by section 3 of the Telegraph Ordinance; or
- (c) by section 7 of the Air Navigation Act, 1920, as applied to Ceylon by Order of His Majesty in Council; or

exercisable by virtue of the prerogative of the Crown; and “exercise” includes, in relation to emergency powers, a purported exercise thereof;

“Executive Committee” means the Executive Committee of Labour, Industry and Commerce;

“land” includes a building;

“movables” does not include money, negotiable instruments, securities for money, evidences of title to any property or right or of the discharge of any obligation, or any documents owned for the purposes of a business

“prescribed” means prescribed by this Ordinance or by regulation;

“regulation” means a regulation made under this Ordinance;

“schemes” means the business movables scheme and the personal movables scheme referred to in section 3;

“war damage” has the meaning assigned to that expression by section 27.

Objects and Reasons.

The object of this Bill is to make provision for the insurance of business movables and personal movables against war damage.

2. Power will be taken to operate two schemes of insurance, both of which will be voluntary. Insurance of the stock in trade of vendors and suppliers has already been provided for in the measure recently passed by the State Council. Compensation for war damage to immovable property will be dealt with in a separate Bill on the lines of the War Damage Act, 1941, of the Imperial Parliament.

3. In addition to making provision for the insurance of business and personal movables, provision has been made (Clause 14) for the payment of compensation for war damage to such movables, whether or not such property has been insured.

G. C. S. COREA,

Minister for Labour, Industry and Commerce.
Colombo, February 9, 1942.